IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Bail Appl..No. 4531 of 2007()

CRIME NO. 207/07 OF KUTHIATHODU POLICE STATION

PETITIONER/4TH ACCUSED

N.K.BASHEER, S/O.KUNJU MUHAMMED, AGED 37
NEELEKATTU NIKARTHU, VADUTHALA JETTY P.O.,
AROORKUTTY, CHERTHALA, ALAPPUZHA DISTRICT.

BY ADV. SRI.R.MURALEEKRISHNAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4531 of 2007

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Dated this the 27th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 4th accused. The crux of the allegations is that on 4.7.07 when the police party gave the stop signal to a vehicle it did not stop and sped away. There were allegedly four persons in the vehicle. Attempt was made to chase the vehicle and apprehend the miscreants. When the jeep was stopped, it was found that the miscreants were carrying in the vehicle arms contrary to the provisions of the Arms Act. Accused 1 and 2 could be apprehended, but Accused 3 and 4 took to their heels and were not available for arrest. Accused 1 and 2 were questioned. F.I.R. was registered. In the F.I.R. petitioner's name is clearly shown. The petitioner has not been arrested so far. He is allegedly absconding. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has a totally different story to advance. He admits his presence along with the first accused at the time when the first accused was apprehended allegedly in a service

station. But, according to him, he happened to be casually present in the service station and since the first accused was known to him he had engaged himself in a conversation with him. The police had come and taken away accused 1 and 2, but the petitioner was not taken into custody. Later, false allegations are being raised against the petitioner. The petitioner has no criminal antecedents whatsoever. In these circumstances the learned counsel prays that anticipatory bail may be granted to the petitioner.

3. The learned Prosecutor opposes the application. The learned Prosecutor submits that the weired theory advanced by the petitioner cannot be accepted. The theory advanced by the accused does not stand to reason at all. There is absolutely no allegation of malafides. Four persons were travelling in the vehicle when the vehicle was stopped. In any view of the matter, there is absolutely no features to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. submits the Prosecutor.

4. I find merit in the opposition raised by the Prosecutor. I am satisfied that there are no circumstances which can persuade this Court to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C.

This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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